

ESTTA Tracking number: **ESTTA680842**

Filing date: **06/30/2015**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92057941
Party	Plaintiff Clockwork IP, LLC
Correspondence Address	BRAD R NEWBERG MCGUIRE WOODS LLP 1750 TYSONS BOULEVARD, SUITE 1800 TYSONS CORNER, VA 22102-4215 UNITED STATES bnewberg@mcguirewoods.com, wfederspiel@mcguirewoods.com, adeford@mcguirewoods.com, trademarks@mcguirewoods.com
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Filer's Name	Brad R. Newberg
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Signature	/Brad R. Newberg/
Date	06/30/2015
Attachments	Clockwork - Reply in Supp. of Mot. for Discovery Sanctions and Entry of Judgment.pdf(61659 bytes) Clockwork - Patel Albers Decl and Exs.pdf(161132 bytes)

Section 2.120(g) of Title 37 of the Code of Federal Regulations specifically states that, “if a party fails to comply with an order of the Trademark Trial and Appeal Board relating to disclosure or discovery, . . . the Board may make any appropriate order, including those provided in Rule 37(b)(2) of the Federal Rules of Civil Procedure.” (*See* 37 C.F.R. § 2.120(g)(1).) There is no dispute in this case that the Board ordered Respondent to fully respond to all of Petitioner’s discovery requests *without any objection* on the merits by April 10, 2015 (thirty days after March 11, 2015), *specifically warning* that,

“[i]n the event Respondent fails to respond to Petitioner’s discovery requests as ordered herein, Respondent may be subject to sanctions, *potentially including entry of judgment against Respondent*” (the “Board’s Order”). (*See* Dkt. # 16 (emphasis added).) Yet, in spite of that explicit warning, Respondent admits in its opposition that it did not respond to Petitioner’s discovery requests as ordered: “Respondent’s second [sic] amended responses were not served on Petitioner on April 10, 2015, as ordered, but instead were served on April 16, 2015,” and Respondent’s responsive documents were not served until April 20, 2015. (Resp’t’s Opp’n (“Resp. Opp.”) at 4 [Dkt. # 24]; *see also id.* at 6; Ex. A–F, H–J to Pet’r’s Mot. for Sanctions (“Mot.”).) Sanctions are proper on that ground alone. (*See* 37 C.F.R. § 2.120(g)(1).)

More importantly, Respondent’s failure to comply with the Board’s Order is not limited to missing the hard deadline imposed. As of today – well more than two months after the April 10 deadline and more than a year since discovery closed – the record shows that Respondent still has not fully responded to Petitioner’s discovery requests in at least the following ways:

- In what amounts to an objection on the merits in violation of the Board’s Order, Respondent refuses to respond to any discovery request involving Clockwork Home Services, SGI, AirTime500, Success Day, Success Academy, CONGRESS, SGI Expo, Brand Dominance, and Senior Tech “[u]ntil Petitioner amends its pleadings in this case [to add them as parties], or better provides an explanation of how any of the above entities relate to Petitioner.” (Ex. G to Mot.)
- Respondent failed to answer ten Requests for Admission. (*Id.*)
- Respondent provided wholly deficient responses to Interrogatory Nos. 6, 14, 25, 26, and 27, and provided incomplete responses to Interrogatory Nos. 2, 7, and 8. (*See* Ex. G, K to Mot.)
- Respondent failed to produce any documents responsive to Requests for Production (“RFP”) Nos. 3, 6, 9, 10, 15, 16, 19, 30, 35, 59, 60, 63, 66, 67, 68, 73, 74, and 79, despite stating “see documents provided herewith.” (*See* Ex. G, K to Mot.)
- The documents Respondent did produce in response to RFP Nos. 11, 13, 18, 26, 34, 56, 57, and 62 indicate that its production in response to those Requests is deficient. (*See* Ex. G, K to Mot.)
- In lieu of producing any documents in response to RFP Nos. 20, 33, and 82, Respondent provided inaccurate and incomplete written responses – which also amount to objections on the merits – such as its response to RFP No. 33 (which requests “[a]ll documents showing or relating to Respondent’s awareness of, and first dates of awareness of Petitioner’s Mark”) that “Respondent is not aware that Petitioner owns any mark.” (*See* Ex. G, K to Mot.).

The fact that so many blanket deficiencies exist in Respondent's responses and production, even after the Board's stern warnings, is troubling, and Respondent's response to this Motion is telling.

Respondent barely addresses the alleged deficiencies, spending the majority of its opposition making excuses and arguing that sanctions are inappropriate because its failure to meet the April 10 deadline was purportedly unintentional. (Resp. Opp. at 2, 4–6, 9.) But that point is misplaced, not only because willful misconduct is not a prerequisite to discovery sanctions,¹ (*see* 37 C.F.R. § 2.120(g); Fed. R. Civ. P. 37(b)(2)), but also because Respondent's behavior and continued "the dog ate my homework" arguments over the last thirteen months completely undermine the contention that noncompliance was not willful. Significantly, Respondent did not just miss the deadline: it still has not remedied the deficiencies in its responses or document production. Instead of bringing itself in compliance with the Board's Order, Respondent continues its pattern of excuses and tactics designed to shift blame.

In the opening paragraph of its opposition, Respondent baldly states that it complied with the Board's Order because it had already "provided the discovery requested by Petitioner even prior to the issuance of the Board's March 11, 2015 order, and Respondent has provided supplements thereto." (Resp. Opp. at 1.) But Respondent points to no actual evidence in support of that contention. Instead, Respondent merely touts its production of a "customer list" that is not even fully responsive to the one Request Respondent identifies,² and its general claim that it produced either 400 or 600 additional documents to Petitioner on April 20, 2015. (*Id.* at 1–11.) Respondent wholly ignores the deficiencies Petitioner identified in Respondent's Interrogatory responses. Furthermore, Respondent's reliance on the

¹ Respondent argues that sanctions are not appropriate under the Board's inherent power, citing *Chambers v. NASCO, Inc.*, 501 U.S. 32 (1991). (Resp. Opp. at 8.) But that case and argument are irrelevant because the Board's authority to impose sanctions here – including the entry of judgment – is derived from section 2.120(g) and Rule 37(b)(2) and is not dependent on the Board's "inherent power."

² Of the over thirty deficiencies Petitioner raised in its April 28, 2015 deficiency letter, Respondent makes a feeble attempt to address only a single one, claiming it responded fully to RFP No. 10 because it produced the COMFORTCLUB membership registration forms, or a "complete list of each and every customer to whom it has sold" those memberships. (Resp. Opp. at 6.) RFP No. 10, however, requests "[a]ll documents and things relating to the *types* of customers to whom Respondent has provided or is providing products or services identified by Respondent's Mark," and the registration sheets do not provide that information. (*See* Ex. G, K to Mot. (emphasis added).)

number of documents produced, many of which were duplicates – as opposed to the substance of those documents – does not demonstrate satisfaction of the Board’s Order, for at least the reasons that Petitioner identified deficiencies (including as noted above) *after* reviewing all documents produced to date.

Continuing to ignore its deficient Interrogatory responses in its Opposition to this Motion, Respondent focuses solely on document production and declares that it has produced all responsive documents and that it is under no obligation to create documents. (*Id.* at 7.) Petitioner has never suggested that Respondent must create responsive documents. Petitioner is instead questioning why, when asked about entire categories of documents that are missing from Respondent’s production, Respondent’s counsel, while admitting that she did not fully review Petitioner’s April 28 deficiency letter, merely made a blanket claim that responsive documents did not exist, contradicting the RFP responses themselves, which stated: “see documents produced herewith.” (*See* Ex. G, L to Mot.) Given the history of this case, Respondent’s flip-flopping raises serious flags. It should also be noted that such a position, if true, would almost demand judgment in any case on the merits as it would mean a business that has supposedly used a trademark for the last seven years does not have a single document responsive to RFPs aimed at establishing creation and ownership of the mark in question, as well as the mark’s use in commerce, such as documents “relating to the first use anywhere and the first use in commerce of Respondent’s Mark or on behalf of Respondent” (RFP No. 6), “relating to or detailing Respondent’s selection of Respondent’s Mark and the decision to file a U.S. Trademark application for COMFORTCLUB,” (RFP No. 35), or “sufficient to show the type, identity, and geographic distribution of all media in which Respondent has advertised or intends to advertise goods and services using Respondent’s Mark,” (RFP No. 60). Simply put, none of Respondent’s points support the conclusion that it complied with the Board’s Order or that judgment should not be entered.

Respondent’s Opposition is otherwise a litany of excuses that only relate to a portion of Petitioner’s Motion. For example, Respondent claims that sanctions are not appropriate because its failure to meet the Board ordered deadline was caused by “an [sic] technical error caused by a newly added software application, Google Calendar, with which counsel for Respondent had no knowledge was

being utilized, or that it would interfere with her office Apple iCal.” (Resp. Opp. at 4.) As one of the cases Respondent cites makes clear, inexperience and technical errors do not excuse failure to comply with a Board ordered deadline: “Litigants who fail to comply with court scheduling and discovery orders should not expect courts of appeal to save them from the consequences of their own delinquence.” *Saudi v. Northrop Grumman Corp.*, 427 F.3d 271, 274 (4th Cir. 2005). Moreover, Respondent’s lateness excuse does not explain why the responses and documents were not served immediately after Petitioner reminded Respondent of the deadline, and the excuse has absolutely no relevance to Respondent’s continued refusal to remedy the deficiencies identified in Petitioner’s April 28 deficiency letter.³ Finally, it is worth noting that Respondent’s calendar snafu is just one more in the parade of calamities to supposedly befall Respondent since Petitioner served its discovery requests over a year ago. (Ex. 1 to Decl. of Purvi Patel Albers (“Patel Albers Decl.”) (Barnaby’s counsel admitting that the discovery requests were served on June 4, 2014, but were supposedly delivered to the wrong mailbox at her office, resulting in Respondent allegedly receiving the discovery requests on June 30, 2014); Resp. Opp. at 3 (noting that counsel for Respondent “flat-out miscalculated the deadline to file a response to Petitioner’s motion” to compel because this is her “very first TTAB proceeding”)). The Board would be correct to be skeptical of such claims.

Respondent next tries to avoid sanctions by blaming Petitioner for Respondent’s noncompliance. It complains that: (1) had Petitioner “adequately conferred” with Respondent about the deficiencies in Respondent’s April 16, 2015 discovery responses, “Respondent would have supplemented;” (2) the Motion is premature because “[i]f Petitioner believes Respondent has failed to comply with the rules of discovery, or that Respondent’s discovery responses are inappropriate, Petitioner should have brought a motion to compel Respondent’s second amended responses;” and (3) Petitioner’s discovery requests were untimely served. (Resp. Opp. at 2, 6–7.) Each point is meritless.

³ Respondent’s implications and statements that Petitioner did not try to inform Respondent of its deficiencies and that Respondent never said that it would not rectify any deficiencies are directly contrary to the correspondence between the parties already attached to Petitioner’s Motion (Ex. A–F, H–L to Mot.)

First, Respondent’s statement that it would have “supplemented” its responses had Petitioner “adequately conferred” with Respondent prior to filing the Motion appears to be a flat out fabrication. It not only begs the question of what there is to supplement if Respondent has already complied with the Board’s Order (or if no additional responsive documents exist) as it claims, but also ignores that Petitioner has acted in good faith for over a year, allowing Respondent two attempts to satisfy its discovery obligations prior to getting the Board involved, and making two additional good faith efforts – that it was not required to take, *see HighBeam Mktg., LLC v. Highbeam Research, LLC*, 85 U.S.P.Q.2d 1902, 1904 (T.T.A.B. 2008); TBMP § 527.01(a) – to resolve the discovery deficiencies before filing the instant motion, including not filing a motion when Respondent took ten extra days to comply with the Board’s Order and then sending Respondent a deficiency letter, raising only the most egregious deficiencies in Respondent’s responses. (*See* Ex. A–F, I–L to Mot.) Petitioner only filed this motion after Respondent failed to meaningfully respond to that letter at all. (*See* Ex. L to Mot.)

Second, Respondent’s argument that the Motion is premature and that Petitioner must file a motion to compel is inexplicable. Petitioner already filed a motion to compel on these same requests, won that motion, secured an order from the Board requiring Respondent to fully respond to all of Petitioner’s discovery requests without objection on the merits, and Respondent nevertheless violated that order. The Motion is therefore timely and the appropriate vehicle through which to address Respondent’s blatant disregard for its obligations.

And third, Respondent’s complaint that Petitioner’s discovery requests were not timely served when originally sent over a year ago shows its continued obstinacy in the face of the Board’s Order. At best, Respondent’s rehashing of the timeliness of service is irrelevant and an improper collateral attack on the Board’s Order.⁴ At worst, it presents evidence that Respondent’s counsel either fabricated its prior story about its own mailbox mix-up from last year or is fabricating a story now that the discovery requests were late (an argument that was, of course, waived a year ago). (*See* Ex. 1–2 to Patel Albers Decl.)

⁴ For the same reason, Respondent’s repeated statements that the Board granted the motion to compel as conceded are irrelevant to whether sanctions are appropriate.

Put simply, the record establishes that Respondent violated the Board's Order, both by failing to meet the April 10 deadline and by its still seriously deficient discovery responses and production. Sanctions are therefore warranted.

II. The most appropriate sanction is the entry of judgment against Respondent.

The most appropriate sanction in response to the almost thirteen months in which Respondent has failed to satisfy its discovery obligations, and now failed to comply with the Board's Order, is the entry of judgment already threatened by the Board against Respondent. It is well-settled that the "entry of judgment as a discovery sanction for failure to comply with an order compelling discovery . . . is justified where no less drastic remedy would be effective, and there is a strong showing of willful evasion."⁵

Corporacion Habanos, S.A. & Empresa Cubana Del Tabaco v. Cigar King, Ltd., No. 92053245, 2013 WL 6056505, at *3 (T.T.A.B. June 12, 2013); *see also Unicut Corp. v. Unicut, Inc.*, 222 U.S.P.Q. 341, 344 (T.T.A.B. 1994).

Both of those elements are satisfied here. As discussed in more detail in Petitioner's original brief, there is no less drastic remedy that will effectively address Respondent's failure to comply with the Board's Order, especially given the fact that Respondent's noncompliance has denied Petitioner access to information that is essential to its fraud and likelihood of confusion claims. (*See* Mot. at 6–8.)

More significantly, the record establishes that Respondent's failure to comply with the Board's Order and to fully respond to Petitioner's discovery requests is the result of bad faith and callous disregard for its responsibilities as a litigant. Respondent has now had three opportunities to respond to

⁵ Respondent's opposition cites only irrelevant or non-binding cases, many of which do not even address entry of judgment for failure to comply with a Board order. (*See* Resp. Opp. at 1–11.) For example, Respondent improperly implies that additional elements must be established before entry of judgment can be imposed. *See* Resp. Opp. at 9 (citing *Conn. Gen. Life Ins. Co. v. New Images of Beverly Hills*, 482 F.3d 1091 (9th Cir. 2007)). Not only does Respondent fail to cite any authority demonstrating that the Board has adopted the five factor test from the Ninth Circuit, it also ignores that the "elements" are "not a series of conditions precedent" that must be met before imposing judgment and are instead just a "list of factors" that help a "judge to think about what to do." *Conn. Gen.*, 482 F.3d at 1096. In any event, the record shows that the balance of the factors would favor entry of judgment here. *See id.* at 1097 (entering judgment because of "Dickinson's 'pattern of deception and discovery'" made it impossible for the truth to be available and explaining that "[i]t is appropriate to reject lesser sanctions where the court anticipates continued deceptive misconduct").

Petitioner's discovery requests, and it has failed to do so each time. Respondent was warned by the Board that failure to comply with the Board's Order could result in entry of judgment and that "further attempts to extort capitulation from Petitioner by withholding discovery will be looked upon with extreme disfavor," (*see* Dkt. # 16), but Respondent disregarded that warning. At every step in this thirteen month ordeal, Petitioner has acted in good faith, allowing Respondent several chances to satisfy its obligations – including most recently when Respondent served its responses and documents late and when Petitioner raised discovery deficiencies with Respondent when it was under no obligation to do so prior to filing the Motion – but Respondent has not responded in-kind. Instead, at every turn, Respondent has offered excuses, empty promises, and whatever story or position most convenient to it at the time, regardless of whether the new story completely contradicts its prior representations. (*See, e.g.*, Resp. Opp.; Ex. A–F, H–L to Mot.; Ex. 1–2 to Patel Albers Decl.)

Despite its continued gamesmanship and refusal to comply with its discovery obligations and the Board's Order, Respondent claims that its conduct cannot be considered willful because Respondent has never expressly said that it would not comply with the Board's Order. (Resp. Opp. at 2.) But actions speak louder than words, and Respondent's actions are deafening. Its conduct over the last thirteen months is a textbook example of willful evasion and its conduct in response to the Motion shows that Respondent will not change. Entry of judgment is therefore the appropriate sanction. *See Nat'l Hockey League v. Metro. Hockey Club, Inc.*, 427 U.S. 639, 640 (1976) (affirming the district court's entry of judgment as a discovery sanction where the record showed that, "[a]fter seventeen months[,] . . . crucial interrogatories remained substantially unanswered despite numerous extensions granted at the eleventh hour, and notwithstanding several admonitions by the Court and promises and commitments by the plaintiffs" and agreeing that "[i]f the sanction of dismissal is not warranted by the circumstances of this case, then the Court can envisage no set of facts whereby that sanctions should be applied"); *Cigar King*, 2013 WL 6056505, at *3; *Unicut*, 222 U.S.P.Q. at 344.

III. Respondent's motion to reopen the time to supplement its discovery responses should be denied.

In addition to opposing the Motion, Respondent also moved to reopen the time to supplement its discovery responses.⁶ The Board should deny that motion because Respondent did not satisfy its burden to show that its failure to fully respond was the result of excusable neglect. Respondent also completely ignores that Petitioner raised all the alleged deficiencies – including the typographical error in Interrogatory Nos. 25 and 26 that Respondent specifically points to in connection with its motion – in Petitioner's April 28 deficiency letter sent prior to filing this motion for sanctions, and Respondent elected not to amend or remedy any of those deficiencies at that time. (*See* Ex. K–L to Mot.) Respondent's motion should therefore be denied.

CONCLUSION

For the reasons stated above as well as those contained in Petitioner Clockwork IP, LLC's opening brief, Petitioner Clockwork IP, LLC respectfully requests that the Board grant its Motion for Discovery Sanctions and Entry of Judgment, and enter judgment against Respondent in this proceeding. Alternatively, Petitioner requests that the Board enter any other sanction(s) it deems appropriate. Petitioner also respectfully requests that the Board deny Respondent's motion to reopen the time to supplement its discovery responses.

Respectfully submitted,

CLOCKWORK IP, LLC

Filed via ESTTA: June 30, 2015

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⁶ Respondent's motion is unclear as to whether it wishes to supplement all of its responses and production or just amend the typographical error in Interrogatory Nos. 25 and 26. (Resp. Opp. at 2, 11–12.) Either way, the motion should be denied for the reasons stated above.

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Attorneys for Petitioner Clockwork IP, LLC

CERTIFICATE OF SERVICE

On June 30, 2015, this document was sent by first class mail to the following counsel of record:

Julie Celum Garrigue
Celum Law Firm PLLC
11700 Preston Rd
Suite 660 Pmb 560
Dallas, TX 75230

*Counsel for Respondent Barnaby
Heating & Air*

Melissa Replogle
Replogle Law Office LLC
2661 Commons Blvd.
Suite 142
Beavercreek, OH 45431

*Counsel for Assignee McAfee Heating
& Air Conditioning Co., Inc.*

/Amanda L. DeFord/
Amanda L. DeFord

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

CLOCKWORK IP, LLC

Petitioner,

v.

BARNABY HEATING & AIR, and
McAFEE HEATING AND AIR
CONDITIONING CO., INC.

Respondents.

Cancellation No. 92057941
Reg. No. 3,618,331

DECLARATION OF PURVI PATEL ALBERS

I, Purvi Patel Albers, declare and state as follows:

1. I am a partner at the law firm Haynes and Boone, LLP, former counsel for Petitioner Clockwork IP, LLC ("Clockwork"). I make this declaration in support of Clockwork's Motion for Discovery Sanctions and Entry of Judgment. The following facts are within my knowledge and, if called and sworn as a witness, I could and would testify competently thereto. The matters referred to in this declaration are based upon my personal knowledge, and/or when referencing documents, such documents were reviewed by me and where applicable, were obtained and compiled at my instruction by other attorneys employed by Haynes and Boone, LLP, and if called as a witness I could testify and would testify competently thereto.

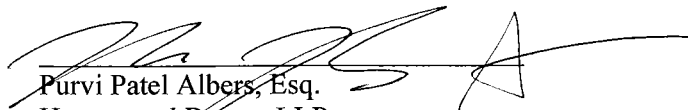
2. Attached hereto as **Exhibit 1** is a true and accurate copy of the email I received from Julie Celum Garrigue, Esquire, counsel of record for Respondent Barnaby Heating & Air, on June 30, 2014.

3. Attached hereto as **Exhibit 2** is a true and accurate copy of the email I received from Ms. Garrigue on September 10, 2014.

The undersigned being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, and that such willful false statements and the like may jeopardize the validity of the application or document or any registration resulting therefrom, declares that

all statements made of his/her own knowledge are true; and all statements made on information and belief
are true.

Executed this 25th day of June 2015 at 3:15 PM.


Purvi Patel Albers, Esq.
Haynes and Boone, LLP

**EXHIBIT 1 TO
DECLARATION OF PURVI
PATEL ALBERS**

From: Julie Celum Garrigue [mailto:jcelum@celumlaw.com]
Sent: Monday, June 30, 2014 10:28 AM
To: Julie Celum Garrigue
Cc: Patel, Purvi J.
Subject: Re: Clockwork IP, LLC v. Barnaby Heating & Air, LLC

Purvi,

Also, just to add to that set forth below. I am leaving today for vacation and will be returning, Monday, July 7, 2014. The best way to reach me during this period is via email, as I will be traveling out of the country.

If you are unwilling or unable to grant the requested continuance, I intend on moving for a continuance by operation of accident or mistake not on the part of my client.

Kind regards,

Julie Celum Garrigue

Celum Law Firm, PLLC
11700 Preston Rd.
Suite 660, PMB 560
Dallas, TX 75230

P: 214-334-6065
F: 214-504-2289
E: jcelum@celumlaw.com

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On Jun 30, 2014, at 9:07 AM, Julie Celum Garrigue <jcelum@celumlaw.com> wrote:

Purvi,

This morning I was handed an envelope containing your June 4, 2014 discovery requests. Through no fault of your client's, or mine, the envelope was delivered to another mailbox holder in my suite.

I will work on providing objections and responses as expeditiously as possible, but I am writing to ask for a July 30th deadline to serve responses?

Please let me know whether your client will agree.

Kind regards,

Julie Celum Garrigue

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F: 214-504-2289

E: jcelum@celumlaw.com

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**EXHIBIT 2 TO
DECLARATION OF PURVI
PATEL ALBERS**

-----Original Message-----

From: jcelum@celumlaw.com [<mailto:jcelum@celumlaw.com>]

Sent: Wednesday, September 10, 2014 11:42 PM

To: Patel, Purvi J.

Subject: Re: ESTTA. Stipulated/Consent Motion. confirmation receipt ID: ESTTA616417

Purvi,

And with all of this, do you pretend not to have received my correspondence relating to our discussions regarding service via email and an extension of the discovery deadline in this case? I have not received a response from you, or your office, regarding my written request, dated August 13, 2014.

Also, your client sent a cease & desist to a third-party on August 8, 2014, requesting they cease use of the COMFORTCLUB mark. Thus, you have kept this information secret for over 1 month, and failed to disclose your client's knowledge about this concurrent use to either my firm, or the Board.

Our position has not changed since you served discovery requests - !!14+ days outside the discovery period!! - and you have not agreed to a reciprocal extension of the discovery deadline.

Do not threaten my client with sanctions, when your client conceals relevant facts and necessary a parties, and my written communications to you and your firm go unanswered. It is you who has procrastinated, failed to disclose relevant evidence and information, and caused further delay.

Your client has misrepresented its date of first use in its initial trademark application and its petition for cancellation. We also have evidence that suggests that the documents you produced to my office last month indicating a date of first use are not authentic.

Furthermore, there is very newly discovered evidence that your client has sent a written communication to a third-party licensee of the COMFORTCLUB mark. Given these new developments and your lack of communication to my written correspondence, we are moving for a continuance of all of the deadlines, and will be filing a motion to join a necessary third-party immediately upon the recording of the assignment.

Julie Celum Garrigue
214-334-6065

> On Sep 10, 2014, at 6:38 PM, "Patel, Purvi J." <Purvi.Patel@haynesboone.com> wrote:

>

> Correct - the extension I filed and that we agreed to was an extension of all deadlines with the TTAB (chain attached). Discovery had already closed when we had our discussion, but Clockwork's discovery requests were served within the period (as explained previously in our various communications, as well as in detail in my formal correspondence to you earlier today). Your client's obligation to respond to discovery served within the discovery period continued (the close of the discovery period does not obviate that requirement). Moreover, Clockwork consented to a July 15, 2014 extension to Barnaby for purposes of submitting responses and responsive documents. Your July 15th communication/objections were not responsive -- and rather, Barnaby's discovery responses were woefully deficient and your objections were without merit. In your July 18, 2014 email (attached), you indicated that you would

move forward with providing more substantive discovery responses, but we have not received any additional information to date. Now, once again, we are coming upon the pretrial disclosure deadline and we still do not have a single responsive document or response from you. In light of this, absent an additional 30 day extension during which you properly reply to our discovery requests/make documents and things available for our review, Clockwork is left with no choice but to proceed with a Motion to Compel and for Sanctions. As you well know, the TTAB does not view a failure to respond to discovery kindly, and would likely grant sanctions in this case. Since this proceeding does not seem to be moving forward, and Clockwork has tried to amicably resolve this dispute while receiving wholesale refusals from Barnaby, my client is seriously considering whether TTAB intervention or federal court involvement makes more sense at this point.

>

> We will expect to hear from you regarding the extension of deadlines by early Friday AM. We will get started on our Motion in the meantime. I look forward to our Friday afternoon call at 4:30 -- I will call you.

>

> -----Original Message-----

> From: jcelum@celumlaw.com [<mailto:jcelum@celumlaw.com>]

> Sent: Wednesday, September 10, 2014 6:07 PM

> To: Patel, Purvi J.

> Subject: Re: ESTTA. Stipulated/Consent Motion. confirmation receipt

> ID: ESTTA616417

>

> Purvi,

>

> The stipulation you filed only extended pretrial disclosures. It did not extend discovery.

>

> Also, the letter your client sent was dated August 8th. I want to be clear that I did not receive the letter until some time after. Wasn't sure if I made that clear when we spoke moments ago.

>

> Julie Celum Garrigue

> 214-334-6065

>

>

>

>> On Jul 18, 2014, at 11:17 AM, "Patel, Purvi J." <Purvi.Patel@haynesboone.com> wrote:

>>

>> Julie - Here is the 60 Day Stipulated Extension Request as filed with the PTO. I will be sending your service copy by mail, per our agreement in the Discovery Conference. If you prefer to have email service be an option, let me know. I am out of pocket for the rest of the day too, but look forward to discussing next steps next week. Thanks.

>>

>> -----Original Message-----

>> From: estta-server@uspto.gov [<mailto:estta-server@uspto.gov>]

>> Sent: Friday, July 18, 2014 11:15 AM

>> To: Patel, Purvi J.; IPDocketing; jcelum@celumlaw.com

>> Subject: ESTTA. Stipulated/Consent Motion. confirmation receipt ID:

>> ESTTA616417

>>

>> Stipulated/Consent Motion.

>>

>> Tracking No: ESTTA616417

>>

>>

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>> ELECTRONIC SYSTEM FOR TRADEMARK TRIALS AND APPEALS Filing Receipt

>>

>> We have received your Stipulated/Consent Motion. submitted through the Trademark Trial and Appeal Board's ESTTA electronic filing system. This is the only receipt which will be sent for this paper. If the Board later determines that your submission is inappropriate and should not have been accepted through ESTTA, you will receive notification and appropriate action will be taken.

>>
>> Please note:
>>
>> Unless your submission fails to meet the minimum legal requirements for filing, the Board will not cancel the filing or refund any fee paid.
>>
>> If you have a technical question, comment or concern about your ESTTA submission, call 571-272-8500 during business hours or e-mail at estta@uspto.gov.
>>
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>>
>> The Board will consider and take appropriate action on your filing in due course.
>>
>> Printable version of your request is attached to this e-mail
>>
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>> ESTTA server at <http://estta.uspto.gov>
>>
>>
>> ESTTA Tracking number: ESTTA616417
>> Filing date: 07/18/2014
>>
>> IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK
>> TRIAL AND APPEAL BOARD
>>
>> Proceeding : 92057941
>> Applicant : Clockwork IP, LLC
>> Other Party: Defendant
>> Barnaby Heating & Air
>>
>>
>> Motion for an Extension of Answer or Discovery or Trial Periods With
>> Consent
>>
>> The Close of Plaintiff's Trial Period is currently set to close on 09/02/2014. Clockwork IP, LLC requests that such date be extended for 60 days, or until 11/01/2014, and that all subsequent dates be reset accordingly.
>> Time to Answer :CLOSED
>> Deadline for Discovery Conference :CLOSED Discovery Opens :CLOSED
>> Initial Disclosures Due :CLOSED Expert Disclosure Due :CLOSED
>> Discovery Closes :CLOSED Plaintiff's Pretrial Disclosures :09/17/2014
>> Plaintiff's 30-day Trial Period Ends :11/01/2014 Defendant's Pretrial
>> Disclosures :11/16/2014 Defendant's 30-day Trial Period Ends
>> :12/31/2014 Plaintiff's Rebuttal Disclosures :01/15/2015 Plaintiff's
>> 15-day Rebuttal Period Ends :02/14/2015
>>
>>
>> The grounds for this request are as follows:
>> Parties are unable to complete discovery/testimony during assigned
>> period Parties are engaged in settlement discussions
>>
>> Clockwork IP, LLC has secured the express consent of all parties to this proceeding for the extension and resetting of dates requested herein.
>> Clockwork IP, LLC has provided an e-mail address herewith for itself and for the opposing party so that any order on this motion may be issued electronically by the Board.
>>

>> Certificate of Service
>>
>> The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address of record by First Class Mail on this date.
>>
>> Respectfully submitted,
>> /Purvi J. Patel/
>> Purvi J. Patel
>> patelp@haynesboone.com, ipdocketing@haynesboone.com
>> jcelum@celumlaw.com
>> 07/18/2014
>>
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